SB Civil Misc. Appeal No. 735/2001

Date of Order: 22nd March, 2006.

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. D.R. Bhandari for the appellant.
Mr. J.L. Purohit for the respondent.

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Heard the learned counsel for the parties.

This is not disputed that summons were ordered to be sent for 03.03.97. On that day, no ex-parte order was drawn by the Court. Thereafter, the case got transferred to another court on 19.03.97. The transferee Court ordered issuance of fresh summons. Those summons were perhaps not issued because there is no mention of the fact that those summons were every issued and on 08.05.97, an ex-parte order was drawn on the basis of the summons issued by the transferor court on 03.03.97. This obviously is a mistake becuase those summons were not for the day on which ex-parte order was drawn. In that view of the matter, ex-parte order was patently wrong. In that view of the matter, the order impugned has been passed without service of the petitioner and therefore, deserves to set aside and consequently, set aside. The matter is remanded back to the trial court. Now there is no need for fresh service. Parties will present themselves before the court below on 01.04.06. The petitioner will however, pay a cost of Rs. 2000/-.

The appeal is disposed of.

(BHAGWATI PRASAD),J.